

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

## SENTENCING HEARING

BEFORE THE HONORABLE PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE

## A P P E A R A N C E S:

KENNETH G. SHINE, ESQ. and JAMES F. LANG, ESQ., ESQ.,  
Assistant United States Attorneys, Office of the United  
States Attorney, 1 Courthouse Way, Boston, Massachusetts,  
02210, for the Plaintiff.

MARK W. SHEA, ESQ., Shea, Laroque & Wood, LLP,  
47 Third Street, Suite 201, Cambridge, Massachusetts,  
02141-1265, for the Defendant.

ALSO PRESENT: Denise Rivera, United States Probation

United States District Court  
1 Courthouse Way, Courtroom 19  
Boston, Massachusetts  
March 19, 2008, 3:00 p.m.

LEE A. MARZILLI  
OFFICIAL COURT REPORTER  
United States District Court  
1 Courthouse Way, Room 3205  
Boston, MA 02210  
(617) 345-6787

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## 1 P R O C E E D I N G S

2 THE CLERK: The case of the United States v.

3 Charles Carrington, Criminal Action No. 05-10074, will now be  
4 heard before this Court. Will counsel and U.S. Probation  
5 please identify themselves for the record.6 MR. LANG: Good afternoon, your Honor. James Lang  
7 for the government.8 MR. SHEA: Good afternoon. Mark Shea for  
9 Mr. Carrington.10 MS. RIVERA: Good afternoon, your Honor. Denise  
11 Rivera for Probation.12 THE COURT: Thank you. All right, so we have a  
13 problem because I'm told that Mr. Shine, who is the new AUSA  
14 on this case, is delayed in traffic. Is that it?15 MR. LANG: He probably improvidently thought that  
16 he could try a couple of OUI cases before Judge Collings in  
17 Hyannis today and get back here in time, and I don't know  
18 what the delay is, but he called me at ten to 3:00, and he  
19 was still in Bourne.

20 THE COURT: What part of Bourne?

21 MR. LANG: He didn't say, and I didn't ask. I  
22 asked whether he had the file. He does, so --23 THE COURT: For those of us who actually travel  
24 that route a fair amount in the summer, that puts him, at  
25 lawful speeds, at ten minutes of 4:00, so --

1                   MR. SHEA: But as a U.S. attorney, he doesn't have  
2 to drive at lawful speeds.

3                   THE COURT: Maybe. And it also depends where.

4                   So let me say this: Normally I would just bump it,  
5 except we have a doctor here who took time out of his  
6 schedule. My proposal is that we at least let -- were you  
7 planning on calling him as a witness?

8                   MR. SHEA: Yes.

9                   THE COURT: Is he your only witness?

10                  MR. SHEA: Yes.

11                  THE COURT: So I've actually -- this may be the  
12 third time I've heard from Dr. Mart. I've had a long  
13 history. As I'm sure you know by now, there are competency  
14 issues.

15                  MR. LANG: Yes, your Honor.

16                  THE COURT: And we did at one point where he was  
17 adjudicated incompetent and another point where we found him  
18 competent, and, of course, now it's a question of whether  
19 there's any kind of diminished capacity. I'm assuming that's  
20 what you're bringing him in for. So I think what we should  
21 do is not delay his testimony and not ask him to stay, let  
22 him testify now. And then we can, if we need to, continue  
23 the sentencing until Mr. Shine is back with the file. I have  
24 received no memo from the government, so I don't even have a  
25 coherent position. I think I know what it will be, but I

1 can't ask you to do that.

2 One question is: Why isn't Mr. Connolly on the  
3 case, who knows this case inside out and could probably --

4 MR. LANG: The problem with that, and it's  
5 certainly not -- it's just an internal office thing, but  
6 Mr. Connolly left the Major Crimes Unit about two and a half  
7 years ago. He hung onto a number of our cases while he spent  
8 all that time in the Drug Unit. It was always a little bit  
9 of a source of contention, particularly those that were  
10 fairly time-consuming as this one was. He's now moved on to  
11 yet another unit, Economic Crimes Unit, and it was becoming  
12 more and more difficult for me to get my fellow supervisors  
13 to allow him to stay on cases two and a half years after he  
14 left my unit.

15 THE COURT: All right, fair enough, but here's our  
16 issue: You know nothing.

17 MR. LANG: I do -- you know, I've talked to  
18 Mr. Connolly and Mr. Shine, you know, over the years and  
19 months about the case, so I know something about it. I was  
20 aware of the competency issues.

21 THE COURT: But here's my issue: I don't want to  
22 make Dr. Mart come back yet again.

23 MR. LANG: Fair enough.

24 THE COURT: My suggestion is, we put him on. He's  
25 actually familiar with the court and with this thing. You're

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1 not as much, but I think he'll be straightforward. I may ask  
2 a few questions. And then if we still don't have Mr. Shine  
3 back, we will continue the actual sentencing. Does that make  
4 some sense from your point of view?

5 MR. SHEA: That's fine.

6 THE COURT: Unless you want to just defer the whole  
7 thing. I don't want to inconvenience the doctor, that's all.

8 MR. SHEA: Either way, whatever -- I mean, if it's  
9 more fair for Mr. Shine to be here, I'm sure Dr. Mart can  
10 come back.

11 THE COURT: If there's some follow-up question, you  
12 guys can order the transcript and decide what you want to do;  
13 but I think we should just do this because he's just been  
14 here so often. And also it's a CJA expense. I mean, we're  
15 paying for an afternoon. We should just put the doctor on,  
16 and Mr. Shine can then get the transcript.

17 MR. LANG: That's fine. Can I just ask a question  
18 that may help inform what I do on cross, if anything?

19 THE COURT: Yes.

20 MR. LANG: For some reason it was my understanding  
21 that there was a contention that because of the incompetency  
22 finding, at least for a period of time during the pendency of  
23 this case, that Mr. Shea was arguing that he wasn't competent  
24 when he entered guilty pleas many years ago in state  
25 proceedings. The doctor's focus of the testimony isn't on

1 his competency way back when but on the diminished capacity  
2 now?

3 THE COURT: That's a good point. I actually  
4 don't --

5 MR. SHEA: I was actually going to do both, the  
6 diminished capacity he had at the time of the event of this  
7 crime, meaning before he went to Missouri and was rendered  
8 competent, but also as to his competence back in 1995 and  
9 1985 when he had the change --

10 THE COURT: No, but I'm not going to invalidate the  
11 conviction. You have to go back to those courts. And I know  
12 you've tried a few times unsuccessfully, but --

13 MR. SHEA: Right. I'd still like to put some  
14 evidence in and make the argument, though.

15 THE COURT: Sure.

16 MR. SHEA: But to be up front with Mr. Lang, yes, I  
17 do intend to go into that area, not at great length.

18 THE COURT: Your argument is going to be he was  
19 incompetent at those times?

20 MR. SHEA: Yes.

21 THE COURT: Because, obviously, when you look at  
22 his record -- I had never seen it before until yesterday, and  
23 it stands out, so I think it's relevant information as to  
24 what was going on at that time.

25 Why don't you call him up.

1 MR. SHEA: Okay. Dr. Eric Mart.

2 THE COURT: Mr. Shine's current status is  
3 Braintree.

4 ERIC MART, M.D.

5 having been first duly sworn, was examined and testified as  
6 follows:

7 THE CLERK: Would you please state your name and  
8 spell it for the record.

9 THE WITNESS: My name is Eric Gaylen Mart, M-a-r-t,  
10 Eric with a C.

11 MR. SHEA: Judge, should I take you back through  
12 Dr. Mart's credentials?

13 THE COURT: No. He's qualified.

14 DIRECT EXAMINATION BY MR. SHEA:

15 Q. Doctor, you were first retained in this matter to  
16 evaluate Mr. Carrington, correct?

17 A. That's correct.

18 Q. And what did you do in evaluating Mr. Carrington?

19 A. Well, the first time around I evaluated him and I gave  
20 him a mental status examination, social history. I  
21 administered the MacArthur Competence Assessment Tool -  
22 Criminal Adjudication; the Instruments for Assessing,  
23 Understanding & Appreciation of Miranda Rights, the Emotional  
24 Problems Scales, self-report inventory, 15-symbol test,  
25 Kaufmann Functional Academic Skills Test, Kaufman's Short

1 Neuropsychological Assessment Procedure, and Reynolds  
2 Intellectual Assessment Scales.

3 Q. And in reviewing the results of those test, what  
4 conclusions did you reach?

5 A. Well, overall Mr. Carrington, aside from the issue of --  
6 well, number one, I thought that he had some problems with  
7 understanding trial procedure and assisting counsel related  
8 to competence. I thought that his IQ was likely to be in the  
9 mild range of mental retardation, and that he might have some  
10 processing learning disabilities or neuropsychological  
11 dysfunction as well. He had some difficulty with  
12 understanding some factual aspects of standing trial, and  
13 also had problems with some of the rational aspects as well.

14 Q. Did you do further competency testing?

15 A. Well, I did screen him again when he came back after  
16 having been in the federal facility.

17 Q. Okay. Now, back to the first set of testing. Did you  
18 come to a conclusion about his competence?

19 A. Yes. At that time I thought that he did not meet the  
20 standards for competence.

21 Q. And why?

22 A. Well, he --

23 THE COURT: Excuse me. When was that again?

24 THE WITNESS: That was, I believe, the -- I'll tell  
25 you exactly. That evaluation was done on July of 2005.

1 Q. And your conclusion that he wasn't competent to stand  
2 trial was based on what?

3 A. Well, he had low scores on the MacArthur, several  
4 sections of the MacArthur, what they call the MacCAT-CA  
5 competence instrument, and in addition had some problems that  
6 were seen on the Instruments for Assessing, Understanding &  
7 Appreciation of Miranda. Even though it wasn't specifically  
8 a Miranda issue, he had some problems understanding the  
9 nature of his rights in trial. And I thought that based on  
10 the responses he was giving me, that he fell below the cutoff  
11 as I understood it.

12 Q. And did you feel that he was suffering from a mental  
13 condition?

14 A. I thought that he -- yes, I did.

15 Q. And what was that?

16 A. I thought that he had several conditions. One of them  
17 was that he had mild retardation, possibly borderline  
18 intelligence -- he fell in that range -- and also appeared to  
19 have specific learning problems.

20 Q. And eventually you came to know that Mr. Carrington was  
21 evaluated by a Dr. Thomas Gutheil?

22 A. Yes.

23 Q. And are you familiar with Dr. Gutheil?

24 A. Yes, I am.

25 Q. And how are you familiar with him?

1 A. Well, I've met him, but also we read his books, you  
2 know, back when I was studying forensic psychology initially.

3 Q. And so would it be fair to say he's well respected in  
4 the field?

5 A. Yes. He's very well known as a forensic psychiatrist.

6 Q. And you were made aware of his report that found  
7 Mr. Carrington not competent as well?

8 A. Yes.

9 Q. And did you review his findings?

10 A. I did.

11 Q. And in reviewing his findings and yours, were there  
12 differences? What were the similarities?

13 A. I think that basically we both saw pretty much the same  
14 individual in terms of his intellectual abilities, his  
15 emotional state. I think the only difference of opinion was  
16 that he was more confident that Mr. Carrington could be  
17 restored to competence with proper training and intervention.

18 Q. And eventually Mr. Carrington was sent to Missouri?

19 A. Yes.

20 Q. And that was to attempt to restore him to competence,  
21 correct?

22 A. Right.

23 Q. And you met with Mr. Carrington after he returned from  
24 Missouri?

25 A. I did.

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1 Q. And you testified in this court?

2 A. Yes.

3 Q. Okay. And what was your opinion after his return from  
4 Missouri?

5 A. I thought, based on what Dr. Denney and his -- I can't  
6 remember the name of his colleague -- were saying --

7 Q. Dr. Preston?

8 A. That sounds right -- the results of their testing and  
9 their testimony, and also my speaking to Mr. Carrington, that  
10 he appeared to understand better. And it had always been  
11 sort of a close call. You know, he was not -- there was  
12 things he understood and things he didn't, and it seemed that  
13 what he had experienced at the federal facility had helped  
14 with his understanding.

15 Q. Now --

16 THE COURT: Now, when was that? Do you remember  
17 when that was when you came and saw him the second time?

18 THE WITNESS: I'm actually not sure.

19 THE COURT: I'm sure we can find it.

20 (Witness examining documents.)

21 THE WITNESS: I actually don't know.

22 Q. Okay. In terms of -- getting into the background for  
23 Mr. Carrington into the past, since your appearance here in  
24 the Federal Court, you've testified in the state court  
25 regarding Mr. Carrington's competence?

1 A. That's correct.

2 Q. And in the state court matter regarding 1995, you  
3 testified -- what did you testify regarding his competence?

4 A. Well, you had -- you had questioned me about whether I  
5 thought it was likely that he had been competent at that  
6 time, and I testified that I had not evaluated him or even  
7 heard of Mr. Carrington at that time, but that I thought it  
8 was likely that he was, since the types of things that were  
9 rendering him -- that were causing him problems with  
10 understanding were not the types of things that would change,  
11 and that there was some evidence to suggest that that in fact  
12 was true. In other words, you know, we sometimes have  
13 defendants who are psychotic because they go off their  
14 medicine or they have some type of break, and they are  
15 generally very restorable, and their condition will vary  
16 widely. Somebody who's got serious learning problems and low  
17 IQ, that's not very likely to change over the course of their  
18 life span.

19 Q. And so that was a condition you felt would remain  
20 static?

21 A. Right, right.

22 Q. And did you review medical records of Mr. Carrington?

23 A. I looked at his medical records, yes.

24 Q. Okay. And you also reviewed DYS records and other  
25 records from the past?

1 A. Right.

2 Q. And did any of them reveal kind of any intervening kind  
3 of brain injury or anything that would have changed his  
4 mental condition between '85 and 2007?

5 A. No. You know, I started my career as a school  
6 psychologist. That's what my doctorate is in. And, you  
7 know, one of the things that school psychologists do a lot of  
8 is, you look at achievement scores and you look at IQ scores,  
9 and they should be roughly commensurate, right? If they're  
10 very different, then the person has a learning disability,  
11 so it's very easy to sort of mentally plug in the numbers.  
12 And his reading level back when he was looked at by DYS was  
13 consistent with what I found, consistent with my estimates  
14 and other people's estimates of his intellectual ability. So  
15 that did not appear to change.

16 So there seems to be -- I mean, there's not a  
17 tremendous amount of information in the intervening period,  
18 but all the things that were done before he had any reason to  
19 try to alter his performance were all pretty much consistent,  
20 all in the same ballpark.

21 Q. Just to specify, the DYS assessment found him to be  
22 functioning at -- this is when he was seventeen -- to be  
23 functioning at the primary school grade level, correct?

24 A. Right.

25 Q. And the Department of Correction in their assessment of

1 him found him to be reading at the third-grade level; is that  
2 right?

3 A. Yes.

4 Q. And did you also -- probably at an earlier time you  
5 reviewed his educational records from Boston?

6 A. Yes, or what there was.

7 Q. What there was. And that revealed him to be in  
8 Chapter 766?

9 A. Yes.

10 Q. Which is a special education?

11 A. Yes. There's not a lot of detail, but he was involved.  
12 He needed extra supports in school.

13 Q. And were those things relevant to your assessment of his  
14 mental abilities back then?

15 A. Well, it's supportive. I mean, you know, it would be  
16 better if you had the full psycho-educational evaluation from  
17 that time. But what you see here is somebody who was  
18 involved in special education from a young age, who when he  
19 gets into the youth system has academic scores that are  
20 commensurate with IQ scores that I found. And then his  
21 reading level when he's entering corrections is about, once  
22 again, commensurate. If you plotted all of this on a graph,  
23 it would all be pretty much in the same ballpark. It would  
24 all be supportive of the high end of the mild mental  
25 retardation range to the low end of the borderline IQ range.

1 Q. And with all that in mind, do you have an opinion as to  
2 whether he was competent when he changed his plea in the  
3 state courts?

4 A. I don't believe that he was because, you know, when I'm  
5 doing a competency evaluation, the analysis is, first, you  
6 look to see if the person has deficits in their  
7 understanding. In other words, you look at their ability to  
8 answer the questions and do the things needed to stand  
9 trial. Having done that, if you find that there's no  
10 problem, you stop. He's competent, right? If you do find  
11 problems, then you dig a little bit to find out what the  
12 cause might be because the court will be interested to know  
13 whether the person has mental illness, or whether they have  
14 low IQ, or whether they're malingering, what the reason for  
15 the whole thing is.

16 And in this case, you know, there were observed  
17 deficits in 2005. The deficits appeared to be related  
18 causally to the low IQ and learning process deficits. And  
19 from everything, both in terms of the clinical course of  
20 these types of problems and in terms of what information  
21 existed at that time, the same things were present at that  
22 time. So I think, you know, it's reasonable to assume that  
23 his understanding certainly wouldn't have been any better at  
24 that point. And, further, when I saw him in 2005, he had had  
25 the benefit of having gone to court on a number of occasions,

1 which generally improves people's understanding to some  
2 extent.

3 Q. And --

4 THE COURT: When you saw him in 2005, hadn't he  
5 just gone on a crack binge?

6 THE WITNESS: Well, when he got arrested, that's  
7 what he was arrested for. I think he'd been -- I would not  
8 have expected him to still be suffering the effects of that  
9 acutely at the time I saw him.

10 THE COURT: Well, the thing that worries me is, it  
11 didn't take much to get him into competence. He didn't  
12 understand a few functions. As you said, it was a marginal  
13 case.

14 THE WITNESS: Right.

15 THE COURT: And so when you -- if you had had a  
16 defense attorney -- Judge Ball, I notice, said something like  
17 there were very experienced people who had looked at him at  
18 the time, and, you know, he had experienced defense  
19 attorneys. I mean, it is possible that you go in and out of  
20 competency, right?

21 THE WITNESS: Well, I think it's much --

22 THE COURT: Actually, you're guessing in a way  
23 because you're looking backwards ten years.

24 THE WITNESS: Well, I am looking backwards, that's  
25 for sure. I think that there are some forms of conditions

1 that are much more likely to vary. You know, Bridgewater is  
2 full of people who go out, you know, do well for a while,  
3 stop taking their medicine, get very crazy, come back in, get  
4 restored to competence, and are able to stand trial. I think  
5 that the literature and my own experience is that people who  
6 have intellectual deficits and have a lifelong pattern of  
7 that, that's not likely to change very much.

8                   And the other thing you had mentioned was, you  
9 know, that did come up in the state case; and the only thing  
10 I would say is that, you know, all you have to do to get  
11 through the colloquy is to say "yes" a few times. You know,  
12 some judges are very careful about it, some are less  
13 involved, but I don't think that that's -- you know, I think  
14 that's important information, but I don't think it's  
15 equivalent to doing a competency assessment. Otherwise, no  
16 one would ask for them.

17 Q. In terms of his restoration to competency here, that was  
18 far more -- how would you categorize the program in Missouri  
19 compared to anything he had had before?

20 A. Well, I mean, that's part of my thinking in this, that  
21 that's one of the premier types of programs for that type of  
22 thing. You know, I was impressed by what they do. I was  
23 impressed by the credentials of the individuals involved. I  
24 mean, that's what they do there. It's not just like -- they  
25 try to do this in New Hampshire sometimes, and somebody sits

1 down with the person and tries to explain over and over,  
2 right? They actually have a methodology and a means of  
3 assessing that type of thing. So, you know, that's as  
4 sophisticated as those types of programs get.

5 Q. When you testified at the state court, what was the  
6 reception to your testimony?

7 A. I would say quite negative.

8 Q. And why?

9 A. One of the things was --

10 THE COURT: Is this Judge Ball?

11 MR. SHEA: Judge McKenna in the BMC.

12 A. I think that the judge was critical of the fact that I  
13 had not spoken to Mr. Carrington's past defense attorneys  
14 regarding how they had perceived him, that it was a  
15 retrospective analysis of a mental state that was not well  
16 received. You know, and I would certainly agree that it  
17 would be -- you know, in terms of how much you can rely on  
18 data, it's always better to do an evaluation of the person at  
19 that time. But, you know, many evaluations that forensic  
20 psychologists do are retrospective analyses of people's  
21 mental state; for example, mental state at the time of  
22 defense. But, you know, look, he's entitled to give my  
23 testimony whatever weight he wants to.

24 MR. SHEA: Nothing further.

25

1 CROSS-EXAMINATION BY MR. LANG:

2 Q. Doctor, obviously I'm less familiar with the entire  
3 background of this case than anyone else perhaps in this  
4 courtroom, so bear with me, if you would.

5 A. Sure.

6 Q. I understand that you made a determination at one point  
7 that the defendant was incompetent, which was a determination  
8 that was also joined in by Dr. Gutheil, who examined the  
9 defendant after you?

10 A. Yes.

11 Q. But you indicated that he perhaps saw the defendant as  
12 more amenable to being restored to competency than had you?

13 A. Yes.

14 Q. And if I understand correctly, he then went off to a  
15 Bureau of Prisons medical facility for efforts to be made to  
16 restore him to competency, and the doctors there made a  
17 determination that they believed they had restored him to  
18 competency?

19 A. Yes.

20 Q. You indicated that you spoke to the defendant after that  
21 and understood that he did appear to have a greater  
22 understanding of the court process and proceedings at that  
23 point than he had when you originally discussed matters with  
24 him?

25 A. Yes.

1 Q. You didn't indicate whether you agreed with their  
2 determination that he had been restored to competency?

3 A. I think he had been.

4 Q. Okay, so you agreed with the judge's subsequent  
5 determination that the defendant was in fact now competent?

6 A. Yes.

7 Q. All right. Mr. Shea asked you to go back and take a  
8 look at some of these prior convictions that the defendant  
9 had and his mental status at that time; is that correct?

10 A. In a way. In other words, I didn't actually go back and  
11 review -- I want to be clear -- I didn't review transcripts  
12 of the trial or of the pleas. I don't even know if they  
13 exist. But basically he was asking me a general question:  
14 "Well, if this is how he is now, do you think he was  
15 probably competent or incompetent at that time?"

16 Q. How many state court proceedings did you testify in with  
17 respect to the defendant's mental status, just one, or was  
18 there more than one?

19 A. I only recall one in state court.

20 Q. And was it your understanding that you were testifying  
21 in conjunction or in potential support of a motion by  
22 Mr. Shea to vacate that conviction?

23 A. Yes.

24 Q. And what was that conviction for?

25 A. I think there were several. I think they were related

1 to, I think, a robbery.

2 Q. And that was in front of a single judge that you  
3 testified before?

4 A. Yes.

5 Q. In the Boston Municipal Court?

6 A. Yes.

7 Q. And you indicated that your testimony was not favorably  
8 received?

9 A. That was my clear impression.

10 THE COURT: There were two larcenies, in May of  
11 1995 and March of 1996, one in Boston District Court and one  
12 in West Roxbury District Court, is that right? One of  
13 those?

14 THE WITNESS: That sounds correct. After having  
15 done it, I didn't -- I don't -- I don't recall exactly what  
16 they were at this point.

17 Q. Now, it's fair to say that you are aware that the  
18 defendant has a very extensive criminal record?

19 A. Yes.

20 Q. And you're aware that he has many convictions on that  
21 record?

22 A. Yes.

23 Q. And is it also fair to say that, at least based on what  
24 you know, at no time prior to the proceedings in this case  
25 has a defense attorney who represented the defendant raised

1 an issue of his competency with respect to all those other  
2 cases?

3 A. That's my understanding.

4 Q. And it's your understanding that no judge before whom  
5 the defendant appeared in any of these prior proceedings has  
6 on his or her own initiative raised an issue as to the  
7 defendant's competency?

8 A. Not prior to this courtroom.

9 Q. Were you aware that there was an evaluation of the  
10 defendant that was requested by a defense attorney in aid of  
11 perhaps sentencing in a case in or about 1997?

12 A. I don't believe I've ever seen that.

13 Q. So you weren't aware that an evaluation had been done at  
14 the request of a defense counsel?

15 A. I don't think so.

16 Q. You weren't aware of it?

17 A. I believe this is the first I've heard of it.

18 Q. You're aware that the defendant went through a court  
19 proceeding in this very courthouse, or at least in the old  
20 federal courthouse, that is? He was convicted of a federal  
21 offense in the late 1990s?

22 A. That sounds correct, but I'm not -- I don't recall.

23 Q. Again, with no issue of competency being raised at that  
24 time?

25 A. I -- I don't believe it's been raised before.

1 Q. Is it fair to say that although you have at least  
2 entertained some doubts as to whether the defendant was  
3 competent at the time that he was convicted of some or all of  
4 these prior offenses, you have no reason to doubt that he in  
5 fact committed all of the prior criminal offenses for which  
6 he stands convicted?

7 A. I mean, I have no information that would suggest  
8 otherwise.

9 Q. So nothing you say would shed any doubt on his factual  
10 guilt of those offenses; is that fair to say?

11 A. No, I didn't address that, and I don't have any  
12 information.

13 MR. LANG: Nothing further, your Honor.

14 THE COURT: Well, you've talked to the defendant so  
15 many times, and he's always been cooperative in this  
16 courtroom. It took me by surprise how violent his record was  
17 as a criminal matter, just because he hasn't really been that  
18 way in here. You've now spoken with him three times, and  
19 it's a little beyond what you're talking about, but  
20 regardless of whether he was competent or incompetent, it  
21 gives me pause for concern, and I didn't know whether you had  
22 any insights into that. I mean, I think there are armed  
23 robberies and rapes and a series of disciplinary reports in  
24 prisons that make him seem dangerous. I mean, putting aside  
25 competency, I worry that he's a danger to society.

1                   THE WITNESS: You know, because of my focus on what  
2 I was doing initially, I didn't have a reason to do an  
3 exhaustive review of his criminal history, and I've only  
4 gotten to know -- and I think at this point I have an  
5 incomplete understanding of his criminal history. I do know  
6 that as I spoke to him more and as I got more information,  
7 you know, through the various times I talked to him, that I  
8 became more aware of his long-term record, and my, you  
9 know -- he does have an extensive criminal record.

10                  MR. SHEA: Just a few things.

11                  REDIRECT EXAMINATION BY MR. SHEA:

12 Q. One, back to competency. When I first retained you for  
13 Mr. Carrington's defense, I didn't flag the issue of  
14 competency, did I?

15 A. No, you didn't. That was something that I raised with  
16 you.

17                  THE COURT: Maybe even with the Court. I remember  
18 we stopped the proceeding midway.

19                  THE WITNESS: Right.

20                  THE COURT: So fair enough.

21 Q. And the other thing, with Mr. Carrington, does he show  
22 himself to be anxious to change, amenable to treatment, in  
23 your opinion?

24 A. You know, he's -- when I've spoken to him, and this is  
25 just my conversations with him, I recall that he was -- you

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1 know, sometimes when I talk to people, I'm doing a competency  
2 evaluation, they need to tell their story, you know. And he  
3 was distraught and upset about the fact that he felt that he  
4 had a good situation going, you know, prior to the most  
5 recent set of charges, and things were working out for him,  
6 and that some stressors -- that he had slipped up. And, you  
7 know, he blamed himself, you know, and was, you know, very,  
8 very upset about it; you know, was concerned about the effect  
9 it had on some of the other people involved; you know,  
10 expressed remorse. You know, and that's just incidentally.  
11 I mean, that's what he was telling me about.

12 You know, so I think that he's somebody who wants  
13 to talk certainly, you know, who I think, you know, is  
14 amenable to developing a therapeutic relationship. I think  
15 that's important. Above and beyond that, I can't really  
16 help. There's not much information I can give you about  
17 that.

18 THE COURT: Just on a rehabilitative front,  
19 regardless of what I do on a term of incarceration, there's a  
20 serious problem here. He's got a long-term history of  
21 violence, and he went back on crack. I heard him in his  
22 confession -- I mean, that was my first relationship -- he  
23 was just sobbing hysterically, so much so that the government  
24 even dropped the confession piece because -- regardless of  
25 what I do on the punishment piece, what will keep him safe

1 and society safe once I let him out again?

2 THE WITNESS: Judge, you know, I do some work for  
3 the state of New Hampshire on assessing violent predators and  
4 people who are -- you know, in assessing recidivism risk and  
5 that type of thing, and one of the issues that I think is  
6 coming up more and more is the fact that, you know, for men  
7 in particular, recidivism drops off rapidly after the age of  
8 forty, about -- I think rule of thumb, about three percent  
9 per year after the age of forty.

10 THE COURT: How old is he now?

11 THE WITNESS: Forty-two, I believe.

12 THE DEFENDANT: Forty-one.

13 THE COURT: Is that just sexually or is that --  
14 sexual predators or just any form of violence?

15 THE WITNESS: No. It's in terms of general  
16 criminality. I mean, I think a lot of things happen. I  
17 mean, there's a lot of reasons why it appears to happen. One  
18 of them is that, you know, hormone levels drop; you know,  
19 people are less able to -- you know, you're not as spry as  
20 you were, you know, so it makes it hard to be a criminal.

21 THE COURT: But what do I do, though? I mean, this  
22 happened what, three years ago, so he was thirty-nine when he  
23 did this, thirty-eight maybe?

24 THE WITNESS: You know, I don't know what has -- I  
25 could give you a better answer if I knew what had been tried

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1 with him up to this point, right? I think that there's no  
2 getting around his antisocial personality disorder. That's  
3 been commented on on a number of occasions, and that is  
4 something that's tough to work with. They are making  
5 progress with it. I think that there are cognitive  
6 behavioral therapies that are provided in some cases.

7 THE COURT: There's no easy drug that I can say  
8 "Take it"?

9 THE WITNESS: No. There's no pill that will do it.

10 THE COURT: It's not like a schizophrenic.

11 THE WITNESS: Well, Mr. Carrington is a  
12 reasonably -- you know, aside from the characterological  
13 issues, is a reasonably well-adjusted individual. In other  
14 words, he doesn't -- well, no, I mean, you know what I mean;  
15 he's not horribly depressed, he's not psychotic, he doesn't  
16 suffer from any type of bipolar disorder that disinhibits  
17 him. He does have a substance abuse problem. He does have  
18 long-term criminal behavior.

19 But he -- you know, I will say that unlike some  
20 other people in this situation I've met, he also -- he brings  
21 some personal strengths to his situation. He is capable of,  
22 I think, a certain amount of empathy. I think he has some  
23 awareness of the wrongfulness of his acts, and I think that  
24 he does -- he actually does experience remorse.

25 You know, one of the things I do when I work with

1 people I think might be psychopathic is, I ask them, you  
2 know, if they've experienced remorse. And then if they say  
3 "yes," I ask them what it feels like, and they don't know  
4 because they've never experienced it. He actually does.

5 So, I mean, you know, I can't give you too far a  
6 greater analysis because I haven't done that type of  
7 assessment of him, but from my personal contact, I would say  
8 that he's getting older; he is somebody who has, I think, at  
9 least the ability to have some kind of therapeutic alliance.  
10 A lot of people who get sentenced don't. He does not have  
11 underlying --

12 THE COURT: Has he ever had actual therapy?

13 THE WITNESS: I don't know. I didn't see any  
14 records of that. I notice that he was seen at Bridgewater at  
15 one point, you know, but I don't know that he's ever been  
16 like, for example, in ongoing group therapy with somebody who  
17 knew what they were doing.

18 THE COURT: Do you know?

19 MS. RIVERA: Not to my knowledge, your Honor.

20 THE COURT: That might be something on supervised  
21 release.

22 THE WITNESS: Right. And the other thing is, I  
23 think that -- I mean, my sense of him this time around, you  
24 know, is that he -- you know, because he is capable of making  
25 a good appearance and can be very polite, very charming in

1 many ways -- and I don't think it's just an act like it is  
2 with some individuals who are involved with the criminal  
3 justice system -- I suspect that he was given a little too  
4 much rope when he was let out. I talked to his lawyer about  
5 that. I think that he, you know, because he was doing so  
6 well and wasn't causing a problem, I think that people kind  
7 of thought that he was going to be okay. And I think that he  
8 actually needed to be watched more closely in terms of drug  
9 use, in particular, because that seems to be a big trigger  
10 for him.

11 THE COURT: Okay, thank you very much.

12 THE WITNESS: Sure.

13 MR. SHEA: Thank you.

14 THE COURT: Well, actually I should ask, does  
15 anyone have any questions based on what I just asked?

16 MR. LANG: No, your Honor.

17 MR. SHEA: No.

18 (Witness excused.)

19 THE COURT: All right, so now I leave it up to you  
20 attorneys what you want to do. He's not here. We could have  
21 suspected that. Mr. Shine was prepared. I'm happy to  
22 reschedule this if you wanted to do that, or I'm happy to  
23 just go forward.

24 MR. SHEA: That's really up to Mr. Lang.

25 MR. LANG: I think I'd prefer to put it over, your

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1 Honor. While we sat here before you came out, I glanced very  
2 quickly through Mr. Shea's motion, and I see that there are  
3 both traditional departure grounds and 3553 considerations.  
4 And if the Court really wanted to, I could certainly address  
5 them, but I haven't had, I think, a fair opportunity to  
6 really reflect on any of them.

7 I will say, because your Honor did indicate that we  
8 didn't have a sentencing memorandum and you weren't sure what  
9 our position was going to be, I can tell you, just so that it  
10 informs everybody, that we will be recommending 151, which is  
11 low end of the career offender guideline, but arguing very  
12 vigorously for it.

13 THE COURT: Let me ask you this: My biggest  
14 concern, regardless of what I do is, when you look at what he  
15 does whenever -- maybe "too much rope" is the right way to  
16 describe it -- we've got to create on the supervised release  
17 end of it, even though he will be much older, we -- can I  
18 possibly do something along the lines of fifteen or twenty  
19 years of supervised release? Am I not allowed to do that?

20 MR. LANG: I think you can't go above five, your  
21 Honor.

22 MS. RIVERA: Actually, according to the statute,  
23 it's not more than three.

24 MR. LANG: Not more than three, that's right, it is  
25 three. It's a twenty-year felony, so it's capped at three

1 years, your Honor.

2 MR. SHEA: While I'm sure the government and I will  
3 disagree and do disagree on the length of the sentence, in  
4 terms of the supervised release, we're actually asking for  
5 vigorous supervision because Mr. Carrington all along,  
6 actually since the day he entered the Federal Court, has  
7 wanted treatment programs. And on supervised release, we're  
8 asking for him to be released to a halfway house, but not  
9 just like Coolidge House or the standard kind of prerelease  
10 halfway house, but to go to a halfway house for substance  
11 abuse; to go from that halfway house to a three-quarter-way  
12 house which is a substance-abuse-oriented place. That would  
13 get him, you know, hopefully, unless they continue to lessen  
14 the length of stay at programs, but that should cover him for  
15 close to a year in a structured environment where he's  
16 getting support for his drug and alcohol problem, and where  
17 he would be allowed to work so he could start to, you know,  
18 get back into the community.

19 THE COURT: I take it he has no family?

20 MR. SHEA: He has family. His mother was going to  
21 come today, but she's ill. His mother is pretty much  
22 chronically ill, so he doesn't have a lot of support systems  
23 out there.

24 THE COURT: Well, whatever I do on the term of  
25 incarceration, it's clear that he needs an intensive program

1 on supervision as tight and as close as we can do it. Am I  
2 allowed to make all three years of supervised release in a  
3 halfway house?

4 MR. SHEA: I don't think you can find a halfway  
5 house that would keep him that long.

6 MS. RIVERA: Yes, I was just going to say that may  
7 be difficult.

8 THE COURT: I mean, this is what kills me about our  
9 statutory scheme. I have to keep people forever on drug  
10 offenses, where what happens is, if he goes back on crack or  
11 just flips out, he uses a gun and he's violent, and I --

12 MR. SHEA: Well, I think he raised his hand because  
13 he did want me to let the Court know he doesn't use a gun. I  
14 mean --

15 THE COURT: Well, he did for some of these. He  
16 didn't in the most recent one. I understand that.

17 MR. SHEA: Well, even in some of the older ones he  
18 didn't. They were charged as armed robberies for his  
19 having --

20 THE COURT: Pretending.

21 MR. SHEA: -- pretended to have a gun, which is, he  
22 understands, fear-inducing, but he does want to make clear he  
23 didn't have a weapon.

24 THE COURT: So you're just saying, of all of these,  
25 the one with the bus driver early on with the gun, and then

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1 others you're saying were just threats rather than actually  
2 having --

3 MR. SHEA: Yes, and that's back when he was  
4 eighteen as opposed to later cases. While he has a  
5 serious -- I don't want to go on if --

6 THE COURT: Fair enough, fair enough. Okay, so,  
7 all right, it's 4:00 o'clock. I just think we should just  
8 cut it right now if you don't want to do it, so --

9 MR. LANG: That's my preference, Judge.

10 THE COURT: We could do it tomorrow morning. We  
11 could do it next week.

12 MR. SHEA: I can't do it tomorrow morning because  
13 I'm flying out tomorrow morning.

14 THE COURT: I know it's -- is tomorrow -- it's the  
15 Easter weekend, I know, so just pick another time, Mr. Alba.  
16 I'm eager to get him out of Plymouth. I'm eager to do this  
17 soon, not later.

18 Here he comes.

19 (Mr. Shine enters the courtroom.)

20 THE COURT: Do you want to take a recess and then  
21 see if we can do this?

22 MR. LANG: I don't see why not, if you give me five  
23 minutes just to discuss what's gone on before you proceed, if  
24 the Court's willing.

25 THE COURT: Let's come back around 4:15, does that

1 make sense, and we'll just do this?

2 MR. LANG: I think it does.

3 MR. SHEA: Yes.

4 THE CLERK: Court is in recess.

5 (A recess was taken, 4:00 p.m.)

6 (Resumed, 4:20.)

7 MR. SHINE: Your Honor, I sincerely apologize to  
8 you. I would never -- and on top of everything, my poor  
9 daughter has been sitting at the airport for two hours  
10 waiting for me. So I messed up on every front, and I'm in  
11 trouble in every possible capacity.

12 THE COURT: What airport?

13 MR. SHINE: Just across the bay.

14 THE COURT: She should just take the cab to here.  
15 But, anyway, that's not my problem.

16 MR. SHINE: Exactly, your Honor. She's in the  
17 building as we speak.

18 THE COURT: All right.

19 MR. SHINE: Thank you.

20 THE COURT: So you've been brought up to speed?

21 MR. SHINE: I have, your Honor.

22 THE COURT: All right, so the government's position  
23 is? Well, let me just start with this. There was a  
24 challenge to whether or not bank robbery is a violent crime,  
25 and I overrule that challenge, so that's preserved for the

1 record. I didn't get a memo from you, right?

2 MR. SHINE: No, you did not, your Honor.

3 THE COURT: So he's a career offender, 19 and 6;  
4 range of incarceration, 151 to 188 months; supervised  
5 release, two to three years; \$15,000 to \$150,000 fine.

6 What's your recommendation?

7 MR. SHINE: Your Honor, just the low end of the  
8 fine range.

9 THE COURT: Fine?

10 MR. SHINE: No, I'm sorry. The 151 months of  
11 incarceration. I'm asking for a low end of the advisory  
12 Guidelines. As a career offender, I'm requesting the low end  
13 of the sentencing range, 151 months to serve, with the  
14 supervised release to follow, no fine. And, your Honor, the  
15 reason I would state -- I mean, the Court has found and the  
16 memos are accurate, and prior to making my recommendation, I  
17 will tell you I've spent a tremendous amount of time  
18 researching this case. I went to Suffolk Superior Court. I  
19 pulled every docket from 1984 to current. I reviewed all of  
20 those dockets. I provided those to Probation and to my  
21 brother relative to Mr. Carrington's history and  
22 Mr. Carrington's life.

23 Mr. Carrington entered the system in 1983. He was  
24 transferred in 1983 into the adult court for a robbery case.  
25 At that time an evaluation of Mr. Carrington was done. At

1 that time the evaluation indicated that Mr. Carrington was an  
2 articulate, intelligent young man who -- and I would quote  
3 from it -- this is 1984, his first into the adult system  
4 referred to him as "Highly honed manipulative skills, which  
5 themselves require a certain amount of intelligence and  
6 sensitive readings of others, appear to defend against his  
7 deeds and insecurity." So at eighteen years old he knew what  
8 was going on. He understood the system. This recommendation  
9 from the -- I think it was the Judge Connolly Center, or the  
10 (Inaudible) Children's Center, indicated that Mr. Carrington,  
11 they thought, knew what he was doing. Then in '84 --

12 THE COURT: But he's not highly intelligent.

13 MR. SHINE: I'm only reading from what the report  
14 testifies to.

15 THE COURT: I know you haven't had a long history  
16 in the case, but one thing almost everyone agrees is, he's  
17 either high mentally retarded or low functioning normal.  
18 He's right on that line.

19 MR. SHINE: Well, yes, yes. There were motions  
20 filed in state court on both matters, the '86 matter which  
21 was heard by Judge Ball and was denied, and a '96 matter  
22 which was heard by Judge Brady and I believe was denied, and  
23 their reasonings are contained within.

24 And what I wanted to point out most importantly --  
25 and this is really important for the Court to review -- in

1 1996 Mr. Carrington was represented by Meredith Lobur,  
2 Committee for Public Counsel Services. That's as good as you  
3 get. That's the best public counsel lawyer that there was.  
4 And at that time Mr. Carrington was evaluated by the CPCS  
5 counselor. And the version of Mr. Carrington's life, the  
6 reason I point out the '84 stuff and the manipulative skills  
7 is, the fact pattern Mr. Carrington provided of what his life  
8 was like to that point and what has been provided to  
9 Probation is as different as night and day.

10 In that time, to the CPCS person, psychologist, he  
11 was a high school graduate. He had a degree or a certificate  
12 in culinary skills. He lived at home. He had a wonderful  
13 home upbringing. He had a brother that was a firefighter,  
14 another brother that was a firefighter, a wonderful  
15 structured life. His mother had remarried to a wonderful  
16 man. I mean, it's in there. This is a wonderful version or  
17 a wonderful story, who got hooked up a little bit with drugs,  
18 and his life fell apart from then.

19 So either he was telling the truth then, or he  
20 played his market, he played to the person because  
21 Mr. Carrington felt at that time maybe there was a chance he  
22 would be released. So, again, he tried to manipulate the  
23 system. He tried to say what Dr. Katz wanted to hear, and  
24 that was denied.

25 Mr. Carrington knows what he's doing. He has not

1 been able to conform his actions to comport with the law.  
2 The three matters that are before you, they're serious cases.  
3 They're violent cases. He's had the best possible  
4 opportunities presented to him, and he's chosen to go in a  
5 different direction with all those opportunities.

6 I believe the government's recommendation is --  
7 it's actually on the lower side, your Honor. I think it's a  
8 fair recommendation, and I'd ask the Court to impose it.

9 I've reviewed Mr. Shea's request for a departure  
10 under 5K2.13. It just doesn't apply in this case. At best,  
11 at best, there are some 3553(a) rationale that might come  
12 into play. I just don't see where it applies. He has been  
13 through the system. He has been through the state system.  
14 He has been through the federal system. He continues to go  
15 off and do what he chooses to do. He's a violent young man,  
16 and he needs to be incarcerated, and I'm asking the Court to  
17 incarcerate him for the 151 months.

18 THE COURT: Thank you.

19 MR. SHINE: Thank you, your Honor.

20 THE COURT: Mr. Shea?

21 MR. SHEA: A few things directly on point. The DYS  
22 assessment, I believe, was a psychological evaluation that's  
23 referenced in Paragraph 105 of the PSR, and in that, "The  
24 defendant presented with borderline intellectual performance  
25 and was defending against an elevated anxiety level." He was

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1 described as "a very needy, dependent, and immature  
2 adolescent who was easily disorganized."

3 It was their opinion -- now I'm not quoting --  
4 their opinion, I believe, that he shouldn't be treated as an  
5 adult, that he should continue in DYS and receive treatment  
6 that he needed. He was in fact treated as an adult, not --  
7 their recommendations were not followed. So he didn't get  
8 any of the treatment he needed. He went directly into a  
9 state prison facility, which had about exactly the opposite  
10 of what he needed.

11 Now, DYS's assessment had him at a grade school  
12 level. The licensed social worker had him at 766 learning  
13 disabled special programs, and another DYS report had,  
14 "Charles is a special needs student who is working at the  
15 primary grade level." All of those things are documented in  
16 the PSR. So there is no question of where he stood with DYS  
17 or where he stood in terms of intellectual functioning.

18 And it is not a manipulation because  
19 Mr. Carrington, he would have had to have manipulated me,  
20 without me even knowing I was being manipulated, to send him  
21 to go see Dr. Mart for a condition I wasn't even sending him  
22 for. I mean, that would require a level of manipulation  
23 that's kind of beyond the imagination, and so I don't believe  
24 that that is what is going on here.

25 I will acknowledge that there is one social worker,

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1 not doctor, social worker report from CPCS which has the  
2 wrong information in it. You know, it has him as graduating  
3 from high school and things like that. It may have been  
4 self-reported by Mr. Carrington. I don't know. But what I  
5 do know is, if any kind of background or, you know,  
6 subpoenaing of the records from his youth had been done, that  
7 would have been put to rest rather quickly.

8 Now, in my sentencing memo I asked the Court to  
9 adopt some departures. I take it that those are not being  
10 adopted and that we're dealing with 3553 --

11 THE COURT: I don't even think the departure will  
12 fly because of the violence, the bank robbery. But that  
13 doesn't mean I couldn't look at various factors, as you know.

14 MR. SHEA: All right, well, I'll argue that --

15 THE COURT: That's why I actually had thought that  
16 this was going to be more of a diminished capacity argument  
17 than a competency one.

18 MR. SHEA: Well, it was both. Well, I dealt with  
19 competency partially because -- well, let me stick to an  
20 argument which is, first, in terms of violence, to make a  
21 record on that -- I know you've ruled -- but this offense was  
22 not a violent offense. It was an offensive offense. It was  
23 something that put someone in fear, who Mr. Carrington  
24 regrets having put in fear, but it isn't truly violent in  
25 terms of there was no weapon. There was no pretending that

1 there was a weapon. There was no physical contact with  
2 anyone. There were no verbal threats.

3 THE COURT: Isn't this the one they usually use? I  
4 mean, every bank robbery I've ever had, regardless of whether  
5 there was a gun, has been deemed an act of violence, and I  
6 think the prong they look at is, it creates a substantial  
7 risk of harm. Isn't that the prong?

8 MR. SHEA: Correct. And to be frank, that's why  
9 Mr. Carrington pled guilty. I mean, we pled guilty to bank  
10 robbery, but we do think that there is a difference between  
11 that and violence.

12 THE COURT: What's that definition?

13 MS. RIVERA: Yes, the threat of -- I don't know the  
14 exact wording.

15 THE COURT: I'm actually embarrassed that I don't  
16 remember it right off the top of my head, but --

17 MR. SHEA: My memory is that it wasn't intent-based  
18 in a way as much as the perception of the individual who you  
19 were robbing, and if they perceived the threat of a harm,  
20 that that was sufficient. I remember Mr. Shine and I going  
21 over this the day of the plea quite a bit and him providing  
22 me --

23 MR. SHINE: Right, it's the perception of the  
24 person that is -- I believe, your Honor, one of the issues  
25 would be the perception of the person that's being robbed,

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1 whether they view it as a violent issue. And I suggest, how  
2 could you not? A gentleman of Mr. Carrington's stature and  
3 size comes in and demands money from you to be taken from a  
4 drawer. There is some discussion about, "I know there's a  
5 guard outside with a weapon. Give me your 100s, 50s, and  
6 20s, and hurry up." I mean, I don't know how I'd feel about  
7 that, but that, to me, suggests a level of violence.

8 MR. SHEA: But I'm just saying that under the  
9 Guidelines, it's a somewhat different definition, and that my  
10 point is that this isn't necessarily violent. I mean, look,  
11 Mr. Carrington understands the wrongfulness of his actions.  
12 He understood the wrongfulness of his actions in the tape  
13 that you heard with him confessing, and he understood the  
14 wrongfulness of his actions when he asked me to make sure  
15 someone from my office went to the bank and apologized to  
16 people, and that in itself is an unusual thing for anyone to  
17 do.

18 THE COURT: Do you have the section?

19 MS. RIVERA: I do. It's "Other offenses are  
20 included as crimes of violence if that offense has as an  
21 element the use, attempted use, or threatened use of physical  
22 force against the person of another, or the conduct set forth  
23 in the count of which the defendant was convicted involved  
24 use of explosives, or, by its nature, presented serious  
25 potential risk of physical injury to another."

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1                   THE COURT: Yes, the risk of physical injury is the  
2 one they usually go off on, okay, when there's not an actual  
3 gun involved. What were you just reading from?

4                   MS. RIVERA: That was from the definition for Crime  
5 of Violence under Guideline Section 4B1.2, Application  
6 Note 1.

7                   MR. SHEA: See, that's where I'm drawing a  
8 distinction. I think that there is a distinction between the  
9 definition of violence in 4B1 and what's required in a  
10 robbery. And we cited a case that does just that, U.S. v.  
11 McVicar in the First Circuit, 1990. They do hold there that  
12 the Guidelines list robbery as a crime of violence, but the  
13 First Circuit then went on to analyze the individual facts of  
14 the case to see if it in fact was a violent crime. And I  
15 think an analysis of the individual facts of this case  
16 doesn't lead one to believe that it was in fact a violent  
17 crime.

18                   THE COURT: Thank you. I overrule that. Under the  
19 definition -- that's what I was looking for, thank you --  
20 under 4B1.2(a)(2), I do think that there was both -- well,  
21 both (a)(1) and (2), "threatened use of physical force," it's  
22 just implicit in what was going on, but also, even if there  
23 weren't, "conduct that presents a serious potential risk of  
24 physical injury to another."

25                   But, in any event, I actually don't know that I've

1 ever seen a bank robbery that isn't considered a violent  
2 crime because of what you have to admit to. But, anyway,  
3 I've made my ruling.

4 MR. SHEA: As to why I had Dr. Mart testify about  
5 competence, partially I had him cover that area because, as  
6 you've heard, we have been at times -- we've been  
7 unsuccessful in two of our new trial motions in the state  
8 court.

9 THE COURT: I actually didn't know that. Which  
10 two?

11 MR. SHEA: The two superior court ones, the 1996  
12 Suffolk Superior Court armed robberies and the 1985 robbery  
13 in Suffolk Superior Court. A decision is pending on the BMC  
14 case.

15 MR. SHINE: I have copies of those individual  
16 decisions, one by Judge Ball and one by Judge Brady, denial  
17 of the motions.

18 MR. SHEA: Judge Ball said that she's willing, in  
19 her written decision, said that she's willing to reopen that  
20 motion if we can find a doctor who's willing to say he wasn't  
21 competent at that time. And Dr. Mart has testified to that  
22 here today and testified to that in the BMC, so we have a  
23 shot at reopening it in front of Judge Ball. But the  
24 Judge Brady decision -- and Judge Brady was not the judge who  
25 sat on it and did not give us a hearing, and ruled on the

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1 papers against Mr. Carrington, despite having in front of him  
2 Dr. Gutheil's report, Dr. Mart's report, and an affidavit  
3 stating that Mr. Carrington had suffered no intervening  
4 injury.

5 Part of why I'm arguing this, Judge, is not just  
6 for the sake of talking. It doesn't seem just or fair to me  
7 that this man is being judged as a career criminal based on  
8 convictions where he clearly was not competent. And, you  
9 know, in the state courts they want to uphold these  
10 convictions as legitimate because in some ways, every time I  
11 go before them on Mr. Carrington's motions, what they do is,  
12 they get their back up and feel threatened that I'm somehow  
13 indicting the entire system. And you know what? They're  
14 right. I'm not going there to indict the entire system, but  
15 they are correct, because what they have set up is that a  
16 lawyer, who doesn't have a lot of time and has a lot of  
17 clients, stands before them and tells them that "Yeah, I read  
18 the green sheet with him."

19 THE COURT: What's that, the --

20 MR. SHEA: It's a change your plea form, a waiver  
21 form. And puts it up before the court. They put it on the  
22 lawyer, "Did you go over the rights with him?" You know,  
23 nine out of ten times, that's back in the lockup with about  
24 eight other guys in the cage, and you're going over these  
25 rights, and then going out and making a deal. And you're

1 making the deal because your lawyer has told you it's a good  
2 deal. And I'm not saying they weren't trying to do the best  
3 for Mr. Carrington.

4 THE COURT: But just to back up a minute, I mean,  
5 if you get these convictions vacated, I'd revisit this under,  
6 I think, United V. Mateo, but I'm not going to vacate the  
7 convictions.

8 MR. SHEA: No, I'm not asking you to vacate them,  
9 but I do think that under 3553(a), what's just can be done  
10 here. And to deem him a career criminal for cases that he  
11 really was not competent for -- and I'm not saying that you  
12 have to find he wasn't competent particularly at the time,  
13 but there is no evidence that he was competent, and the clear  
14 evidence is that he probably wasn't. I mean, he suffers from  
15 intellectual deficits that have been present and documented  
16 since his youth, and they certainly weren't ameliorated by  
17 stays in state prison. So what we have is the state court's  
18 essentially upholding Mr. Carrington's prior convictions  
19 because they know what they're doing on a daily basis is  
20 running through, with little resources, many people who have  
21 learning disabilities who have not been spotted, and that is  
22 an unfortunate truth about what goes on in the state system.  
23 And it doesn't mean that people don't mean well there. I've  
24 practiced there myself. I still practice there. But, I  
25 mean, I was a bar advocate. I know how it works. And when

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1 your client -- you know, they say, "Wrap it up, make a good  
2 deal, get me out of here," you know, you're not hiring expert  
3 witnesses to find out if your client is competent to make  
4 that decision to get out or to make a deal. They're just  
5 saying, "Get me the least time and get me out of here."

6 And, you know, the courts do not want to deal with  
7 it, and what Mr. Carrington presented to those courts was a  
8 complex picture. And they punted so far, and I've been  
9 trying to get them to not punt, but that so far is not taking  
10 place. They do not want to do justice to him because they  
11 feel it opens the door for others, and I don't feel that he  
12 should in justice be found a career criminal based on their  
13 intransigence in dealing with the reality.

14 Now, as to other aspects regarding Mr. Carrington,  
15 he has had an incredible life experience and not in a good  
16 way. You know, he has witnessed his mother being raped. He  
17 has been raped himself. Those are unusual, thankfully,  
18 unusual circumstances. Those place him in a different place  
19 than almost any defendant. And when you add to that all of  
20 the deficits he's had to deal with, and the fact that in  
21 looking, for instance, at his educational record -- you know,  
22 we did manage to get two pages of computer printout and two  
23 pages of his educational records -- Mr. Carrington dropped  
24 out of Dorchester High School, I believe it was in early  
25 November of whatever year he was nineteen or something. It

1 must have been something like 1984 or something like that.  
2 He drops out in November of the fall semester. He had  
3 thirty-four absences and seven days of attendance, and the  
4 Boston Public Schools gave him Ds in everything but shop.  
5 They failed him in shop. So they passed him through. They  
6 deemed him, a young man who showed up for school seven days,  
7 they deemed that passing grades. And I think that is a  
8 shocking and unusual circumstance. At least I hope it is.  
9 And that is his background as well. And when DYS assessed  
10 him and said, "This guy needs some help. Don't treat him as  
11 an adult. Let's get him some help," he was not given any  
12 help but was sent into the state prison system.

13 So when you see his background, his disabilities,  
14 and then how the system treated him, that is not just, and  
15 that is not, hopefully, the usual circumstance for an  
16 individual's life.

17 And after he went into the state system, the PSR  
18 lists that he has some D reports, but those D reports, I  
19 believe I cited, were very early in his life.

20 THE COURT: They said 91 --

21 MR. SHEA: 91.

22 THE COURT: -- disciplinary reports, something like  
23 that?

24 MR. SHEA: Yes, but I went through them and dealt  
25 with -- I feel like I dealt with them, and most of them, the

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1 last ones -- I believe the last ones we argued were in 19 --  
2 he has not received a single D report between 1988 and 2007,  
3 except for the two at the Bureau of Prisons out in Missouri  
4 which were nothing.

5 THE COURT: Well, they weren't violence. Whatever  
6 they were, they weren't violent.

7 MR. SHEA: Well, one was an untidy cell.

8 THE COURT: But one was threatening someone, and it  
9 didn't prove up.

10 MR. SHEA: And he proved he was not guilty of it.  
11 And so, you know, in 1988, at that point he was still only  
12 twenty-two years old. He was early in the system. And so  
13 the D reports, if you believe those are troubling, are way  
14 back in his life, early when he's first in the incarceration  
15 system and fighting his way through and trying to survive.

16 The other thing that I would point out is that  
17 on both of his cases in that earlier time period, he received  
18 parole. And so if he were so violent, if he were so  
19 problematic in terms of D reports, it seems unlikely that he  
20 would have received parole on both of those cases. And so,  
21 you know, I do think that the D report issue overstates  
22 Mr. Carrington's level of violence.

23 In keeping with that, I'm sure the Court is  
24 concerned with his criminal record, and you've stated so.  
25 And it is a troubling record, and Mr. Carrington acknowledges

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1 that. But we would like to go through that, you know, his  
2 more violent events were when he was younger. The rape,  
3 which is an event which has to be dealt with, that one in the  
4 context of himself being a victim of rape, in the context of  
5 him being a young person, that day they were both using  
6 substances together, and of his not understanding things as  
7 well as he should have. And the one mitigating factor, I  
8 think, in that case is that Mr. Carrington gave the victim in  
9 that case his phone number and name after things were over,  
10 and I think that shows his lack of understanding of what he  
11 had done at that time, and that he certainly didn't have the  
12 intent to traumatize. Otherwise, he wouldn't have felt that  
13 the person would be wanting to contact him in the future.

14 As to the robberies, there is a gun involved early  
15 on in '85; but in '95 you start to see, as you pointed out,  
16 the BMC in West Roxbury are both larceny cases, so he's just  
17 taking property but not with a weapon. He then goes on to  
18 robberies where he pretends to have a weapon but does not  
19 have a weapon, and those cases are spelled out. And I think  
20 it's -- I disagreed with Probation on some of the information  
21 they included in here in the PSR, but what I was pointing to  
22 was that the individual who said that Mr. Carrington had a  
23 gun in one of the cases, a Mr. East, they pointed to the fact  
24 that "He pled guilty to you, East, stealing the property of  
25 Store 24 armed with a handgun." The thing that's misleading

1 about that is, that's the same time that he stole stuff from  
2 the Dollar Store. And he kind of went from one place to the  
3 next, and the events at the Dollar Store clearly spelled out  
4 that no gun was shown, that he didn't have a gun, he wasn't  
5 seen discarding a weapon, and that he in fact just had put  
6 his hand in his pocket to act as if he had a weapon.

7 The last bit of his record is the prior federal  
8 case here for contempt of court, which actually grew out of  
9 the idea that he might have been involved in other bank  
10 robberies. And they said that they had a fingerprint  
11 involving another bank robbery, and they wanted him to submit  
12 evidence on that. He was advised, he tells me, by a lawyer  
13 not to do so. Nothing ever grew out of those cases, and the  
14 fingerprint never ever came to fruition, and so it appears  
15 that he actually didn't have anything to do with those other  
16 robberies.

17 And I don't think that's just conjecture on my part  
18 because, frankly, Mr. Carrington is one of the most inept  
19 criminals I have ever seen. There is not a single crime on  
20 his record where he literally is not caught at the scene.

21 THE COURT: Red-handed.

22 MR. SHEA: Red-handed.

23 THE COURT: That's why when you were talking about  
24 the competency piece of it, you may well be right or not  
25 right -- I'll leave it up to the state court -- but I read

1 them with the theory in mind, well, maybe he was competent,  
2 is there was a chance he was innocent? I'm sure you thought  
3 of that too. As I went through it, there was no chance he  
4 was innocent because they caught him at every single scene of  
5 the crime. You're right, they're the least sophisticated  
6 crimes I've ever seen, but in a way that makes him -- it's  
7 worrisome. It's not that -- he's not innocent of them, in  
8 other words. There's no chance that he pled because he was  
9 snookered. They had him cold.

10 MR. SHEA: Right. Well, I don't disagree. I would  
11 just say, the thing is, though, he pled without ever getting  
12 any help. There never was anything put in place to help.  
13 And so if the idea of competency -- for instance, look, to be  
14 honest, I feel lucky in that I didn't spot it. I hired  
15 someone to deal with the confession because, I mean, there's  
16 something when you listen to that tape that jumps out at you.

17 THE COURT: Have you heard the confession?

18 MR. SHINE: Oh, yes, absolutely.

19 MR. SHEA: So I thought, all right, I've got to  
20 have someone look at this. But I didn't spot the competency  
21 right off. So the idea, though, is that then Mr. Carrington,  
22 because of Dr. Mart's work, actually got some help. And he's  
23 wanted help, and I think, you know, his probation officer,  
24 Mr. Payne, would acknowledge that Charles actually is anxious  
25 to better himself. He didn't always ask for the help he

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1 should have asked for, particularly drug problems, but, you  
2 know, he does want to do better.

3 And what I was trying to get at with the record,  
4 though, is that, you know, each of his things becomes less  
5 serious. They're not not troubling, and clearly bank robbery  
6 is serious, but it's more that it's a bank, right? I mean,  
7 in the sense that if he had done this same act in 7-Eleven or  
8 something, it would have come closer to a larceny, and it  
9 certainly would not have been in the Federal Court. It's  
10 that the actions didn't put more people at risk. In fact,  
11 the person most at risk with these ridiculous efforts is  
12 Mr. Carrington, who's pretending to have a gun with people  
13 who do have guns; you know, who's robbing a bank, and by just  
14 pure chance, the armed guard was late to work that day.

15 THE COURT: Is that right?

16 MR. SHEA: So, you know, these are nonsophisticated  
17 crimes that put him at great risk. And he needs to change,  
18 and he understands that.

19 Now, in terms of changing, Mr. Carrington wanted  
20 and continues to want substance abuse treatment. And, now,  
21 when he was only merely in the district court, the first  
22 thing he did was, he asked his lawyer to go to Bridgewater  
23 Treatment Center, and he went for the 30-day treatment  
24 program, and he completed that program and did well with it.  
25 And they, you know, suggested he get further long-term

1 treatment, but obviously that wasn't available.

2 When he went before Judge Dein, I argued for  
3 treatment, and she accepted that argument, but unfortunately  
4 Pretrial Services wasn't able to place him in treatment.

5 Since he's been at Plymouth -- and this is one of  
6 the things we cite as a departure -- you know, there are no  
7 programs there. And in fact -- that's wrong. There are  
8 programs there. They actively deny federal detainees those  
9 programs.

10 THE COURT: Well, we can give him the 500-hour drug  
11 treatment program.

12 MR. SHEA: Right. But that's a point I'd like to  
13 follow too. He wants the 500-hour drug treatment program,  
14 and he's not even going to benefit from it in terms of any  
15 reduction in sentence. This is what I'm trying to get  
16 across: He really does want to change.

17 THE COURT: Why won't he?

18 MR. SHEA: Because of his history, his levels of  
19 offense.

20 THE COURT: But does he still want it?

21 MR. SHEA: Yes, he still wants it.

22 THE DEFENDANT: Yes, I do, ma'am.

23 MR. SHEA: So that's all I mean is, he's at  
24 Plymouth, he wants the programs, they won't let him go to the  
25 meetings. He goes out to Missouri, they're dealing with his

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1 competence, and he's still going to AA and NA meetings. He's  
2 getting certificates for doing well within the treatment  
3 program. Probation requested those records. They haven't  
4 come yet from Missouri, but those were confirmed by the  
5 doctors when they testified here.

6 THE COURT: We have a slight problem, which is it's  
7 almost 5:00 o'clock. How much longer do you think you'll  
8 be?

9 MR. SHEA: I'll try and wrap it up.

10 THE COURT: Or we could put it to another day.

11 MR. SHEA: I'll try and finish in five minutes.

12 THE COURT: Well, I'm assuming Mr. Carrington might  
13 want to say something, and the government might want to say  
14 something in response.

15 THE DEFENDANT: Can I use the bathroom real quick  
16 if it's all right, please? I need to go bad. It will only  
17 take two seconds.

18 THE COURT: Well, we've got an issue because --

19 THE DEFENDANT: No problem. I can wait.

20 THE COURT: No, no, I'm going to let you go to the  
21 bathroom. The issue is, I could finish it now, or we could  
22 put it -- you know, or within five minutes. I'm just worried  
23 you might have a response, and he may want to speak, and he  
24 has to go to the bathroom. What do you want to do?

25 THE DEFENDANT: I can wait for the bathroom.

1 MR. SHINE: It's your call.

2 MR. SHEA: I'll try and wrap it up.

3 THE COURT: See what you can do.

4 MR. SHEA: So the point I'm trying to make there  
5 is, he really does want substance abuse treatment, and he's  
6 sought it in places where it wasn't going to inure to his  
7 benefit here. And in fact, if you look at Missouri, that's  
8 the kind of thing that shows competence, right? I mean, the  
9 idea is, he supposedly is trying to gain the system or  
10 something. Well, here's this guy out in Missouri, and he's  
11 still trying to help himself in a way that shows that he  
12 wants to help himself; you know, that shows that he has a  
13 desire to change.

14 THE COURT: Okay.

15 MR. SHEA: So what I'm asking the Court to do is a  
16 couple different things. Under 3553, just punishment, the  
17 seriousness of the offense, unwarranted disparities, in Gall  
18 they mention not just unwarranted disparities but unwarranted  
19 similarities too in sentencing, and Mr. Carrington does not  
20 deserve an unwarranted similarity to two things, either other  
21 bank robbers -- and I was reading the paper, and there were  
22 some bank robbers sentenced recently in not your court but in  
23 the Federal Court here to fifteen to twenty years. They, you  
24 know, had guns, automatic weapons, body armor. Mr. Carrington  
25 should not be in any way considered in that kind of --

1                   THE COURT: The other day, I think they got twenty  
2                   years?

3                   MR. SHINE: Thirty-five years.

4                   MR. SHEA: Yes, I think one got fifteen.

5                   MR. SHINE: Thirty-five years was Judge --

6                   THE COURT: Judge Wolf's case.

7                   MR. SHINE: Chief Judge Wolf.

8                   MR. SHEA: The point I'm trying to make is, one of  
9                   the guys got fifteen. This is in no way similar. That's a  
10                   real bank robbery. What Mr. Carrington did he's guilty of,  
11                   but it does not -- it falls in terms of conduct at the low  
12                   end of that kind of conduct.

13                   Similarly, for a career criminal, I would ask that  
14                   you think of unwarranted similarities or dissimilarities.  
15                   Mr. Carrington really has had a different kind of life in  
16                   terms of all of the things he's been through, in terms of all  
17                   of the deficits he's suffered that put him in a position  
18                   where he should be treated differently, and a just punishment  
19                   is not to follow the Guidelines of 151 months here.

20                   The other things to look for are, we are asking for  
21                   very strict terms of supervised release. Part of why the  
22                   court upheld the Gall decision was, they found that probation  
23                   is a substantial restriction on freedom; and that one of the  
24                   things they cited to, particularly with Mr. Gall, was that he  
25                   was going to have a rigorous drug-testing regime. And so

1 what I would be asking for, and I mentioned before, was  
2 Mr. Carrington go to a halfway house, go to a  
3 three-quarter-way house, have rigorous probationary  
4 supervision, that he have drug testing, and that those three  
5 years really be the serious three years of supervised  
6 release. He wants that because he thinks that will help him  
7 in the community. I would ask you to consider that as part  
8 of the sentence so that he has less of an incarcerated  
9 sentence.

10 The last thing I just want to say is, he was doing  
11 well, albeit for a short period of time. He showed that he  
12 doesn't want to be a criminal. He got a job, he had a  
13 girlfriend. He really was trying to make it, but he was a  
14 guy without the skills he needed to do it, and he had a  
15 substance abuse history. And then he ends up in the hospital  
16 because he has emphysema, and he ends up readdicted. You  
17 know, that kicks off his addiction cycle, and this crime  
18 happens. What I'm asking is the Court to consider those  
19 circumstances and that this is a person who really wants to  
20 be headed in the right direction. He understands he's going  
21 to be derailed for some period of time and he's got to pay,  
22 but twelve years is far too much for what actually happened  
23 here for someone who didn't have the skills and really wants  
24 them and wants the ability.

25 THE COURT: Thank you. Do you want to say

1 anything, Mr. Carrington?

2 MR. SHINE: I do not, your Honor. Thank you.

3 THE COURT: Would you like to speak?

4 THE DEFENDANT: Yes, I do, ma'am. Should I go up  
5 there?

6 THE COURT: No. You can stay right there.

7 THE DEFENDANT: Okay. I want to say, first of all,  
8 that I'm sorry for everything I have ever done as far as what  
9 I did as far as committing the crime that I have committed.  
10 And I'm not saying that, ma'am, because I know that my life  
11 is in trouble. And I'm just sick and tired of being sick and  
12 tired. Do you know what I mean? I don't blame nobody for  
13 none of the things that I have done. I know you never got a  
14 chance to talk to me. I know you people don't know me, and  
15 you're going by what's on paper. And I have no problem with  
16 what the DA is saying. I have no problem with what you  
17 people are saying. You all are doing your job.

18 At a young age I went out there and I done things  
19 that I have no business doing, me being under the influence  
20 of drugs and going along with a lot of other problems and  
21 stuff. I'm not saying that it makes an excuse for anything,  
22 and I'm sorry for what I have done. And one of the worst  
23 things that I still live with to this day, ma'am, is the case  
24 when I had got locked up for assault with attempt to rape, do  
25 you understand what I'm saying, when I was a kid? And that

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1 hurt me because it should never have happened. I was under  
2 the influence of drugs, and me and the person was making  
3 out. I'd never been involved in a relationship. I'd never  
4 been sexually with anybody, and one thing led to another, and  
5 me not realizing what the hell I did, I got a little  
6 overboard. And when I realized what the hell I did, I ran.

7 And I've lived with that and I live with that to  
8 this day because I was brought up with morals, and I respect  
9 any women I've ever been with ever since. I never put my  
10 hands on them. I never cheat on them. I never stole from  
11 them or anything. And by twenty something years, even though  
12 that I made mistakes and done other things, it's been damn  
13 near twenty-five years, and I never repeated a crime like  
14 that ever again. And I'm a Level 2 sex offender, and I'm not  
15 proud of that and I'm ashamed of that because I have a mother  
16 and I have a sister. And I'm not going to make an excuse  
17 because something happened to me, and I witnessed my mother  
18 being raped at knife point and me being raped, where this guy  
19 made me perform oral sex on him in front of three people in  
20 Bridgewater State Hospital -- I mean Mattapan State grounds.  
21 And a lot of times it was me always trying to be nice to  
22 people and stuff, and I go do stupid crimes.

23 And I never had a gun, believe it or not, in none  
24 of the crimes that I did. I'll be honest to the Court and  
25 say I act like I had a gun. Like the time with the guy in

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1 Franklin Park for the two crimes I had committed? That was a  
2 guy that had robbed me for some weed -- I'm not even going to  
3 lie -- and that was me getting back at them. That's  
4 something I can honestly say about that. All the other  
5 things I did is because of me being stupid and me being under  
6 the influence of drugs and not being able to deal with  
7 certain situations, and I tried to get help when I needed it,  
8 and I never got it.

9 I will never kill nobody, ma'am. I will never hurt  
10 nobody. If you ever look, the real violence that I ever done  
11 physically to anybody is when I did what I did twenty  
12 something years ago, and I never repeated that, and I never  
13 would. And I'm in this court and I'm asking you people to  
14 give somebody a chance that wants to help himself. I'm not  
15 sitting here because I know my life was on the line because  
16 regardless whatever happens, it's going to happen, and I  
17 can't change that.

18 I have never had a chance to talk in front of a  
19 court. I never had a judge that showed consideration for  
20 me. I never had nobody to be able to help me and talk to me,  
21 and I'm begging you people to help me. I asked for help from  
22 the beginning. When I got out of prison this time, I said  
23 I'm going to do all right things. I busted my ass, pounded  
24 the pavement trying to find work. I went to see my probation  
25 officer. I did everything I was supposed to have done. I

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1 got a driver's license. I got a job. I was doing the right  
2 thing, and my family, everybody was proud of me, and I  
3 failed, and I fucking failed, and I feel sorry about that  
4 because I really, really tried to make it right.

5 And what happened is that -- what happened with the  
6 bank robbery, me and my girlfriend, me and Karen had broke up  
7 because of a relationship she had with a married guy. And I  
8 tried going through it. It was my first Christmas out, my  
9 first time being out of prison. I was trying to do the right  
10 thing. And I didn't know what tough love was. I didn't know  
11 that she left me because she was trying to show me tough  
12 love. I was depressed. I picked up after getting out of the  
13 hospital with the medication. I'm not saying that makes any  
14 excuses. I'm wrong for everything I ever done. And I'm  
15 begging you people to help me and refuse to give me twenty  
16 years there. I want you all to help me because I never asked  
17 for help. I never asked the court or anybody for any help,  
18 and I know if I go out there and I even throw something at a  
19 woman, I know, I'm not that crazy enough to know that I would  
20 die in jail, and I don't want that. I love my mother and my  
21 family so much, and I love myself.

22 And just because of my size and everything, like,  
23 when people say be strong, I'm defending people. When I went  
24 to jail and I picked up that 90 something D reports, that all  
25 happened in a matter of a month because of the charges that I

1 came in for. I know that was wrong for what I did, and I got  
2 certain things, but I haven't gotten a D report from 1988 all  
3 the way to that time. And I will do anything that I have to  
4 do to make it right. And I'm not just saying that because  
5 I'm in trouble because regardless of what's going to happen,  
6 it's going to happen, and I'm going to deal with it. And I  
7 still want to be able to do all those things.

8 And, like, my family and stuff like that, my family  
9 has been on drugs and everything like that. You know, I'm  
10 not saying that makes an excuse. Like, my brother in 1990, I  
11 got home from prison after going through all the stuff that I  
12 went through. It was a whole different thing at the time.  
13 My mother was using. My brothers and stuff like that,  
14 cousins and stuff was using. And I got out, and I went in  
15 the kitchen and I seen my brother doing it because I used to  
16 despise -- I was one of those people, "Oh, I'm not into  
17 drugs," and this and that. I was always into working out and  
18 everything like that. And I went in the kitchen and I seen  
19 him doing it, and I snatched it and I tried it. And when I  
20 found what that stuff did do, first, it was for the  
21 excitement, and then it was to take away the pain. And  
22 that's what happens. When I go and do the right thing, I've  
23 always -- I realized this time here it was the little things  
24 I didn't work on, I think, because I had the job, I got my  
25 driver's license. I was doing all the right things. I was

1 doing it for all the people that I felt was right to do it  
2 for instead of doing it for the person that meant the most is  
3 myself, and not realizing that when things go wrong in  
4 relationships with guys, that I've still got to keep going  
5 on. I can't go picking up. I've got to ask for help, and I  
6 never really had a chance to really ask for help because I  
7 was always pushed away.

8 THE COURT: Thank you.

9 THE DEFENDANT: And this is the first time where I  
10 have ever been in a court where I was able to talk. I had  
11 attorneys. They always told me, "Listen, kid, listen, you're  
12 facing twenty years." They sit me in a jail for two or three  
13 years. They come back and they tell me, "Listen, you sign  
14 this paper here. We're going to give you a deal. You go and  
15 tell the judge." I didn't know what the hell was going on.  
16 All's I know is that that was the thing that I had to do.  
17 And then when I get in trouble, then I'm charged as a career  
18 criminal, or I'm charged as this and that. And that was the  
19 time I never even had a gun.

20 I know what I did was wrong, ma'am, and I'm asking  
21 you people to give me one last chance. I swear I will never  
22 hurt nobody. If you look, I ain't never hurt nobody, put my  
23 hands on anybody. I might have scared people, and that's  
24 wrong, and I deserve everything that I have coming to me for  
25 what I have done because it was wrong. Who the hell am I to

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1 go out there with what I had? People don't know what's  
2 happening, and it's not right. Why should society have to  
3 deal with what I have to deal with?

4 I'm an older person. I realize my  
5 responsibilities. I've got disability problems and stuff  
6 like that, and I need help. And I'm begging the Court, and  
7 I'm asking you, ma'am, and I'm asking you, DA, and I'm asking  
8 anybody that's in here that's willing to help me because I  
9 want to help myself. That's something I want to do. I know  
10 you've heard all kinds of stories from all kinds of people.  
11 People say all kinds of things, but the reality, ma'am, I can  
12 bullshit anybody else, but in reality I'm bullshitting  
13 myself. I'm sick and tired of being sick and tired. I don't  
14 want to die in jail. I want to make it.

15 THE COURT: Thank you. So I feel as if I've known  
16 you for a very long time now. We've spent more time on this  
17 case than many, simply because there have been all sorts of  
18 issues of competency, and so therefore we've had, oh, I don't  
19 know how many hearings, multiple hearings. And you've always  
20 been respectful in court. You've always been remorseful.

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And you've, I think, shown some empathy  
23 for others. I was particularly impressed with the fact that  
24 you confessed so that the other guy driving the car, who was  
25 totally innocent, wouldn't sit in jail, and that piece I

1 think is on your side of the story.

2                   But there's another side too. When you talk about  
3 unwarranted disparity, yours is a terrible criminal record,  
4 terrible. And I actually was surprised when I saw it because  
5 you'd always been so respectful in court. So while I do view  
6 you as having hope, I also have to view with what you've done  
7 in the past. And it isn't just the rape. I'll take your  
8 word for it that that was idiosyncratic. It's just one  
9 robbery and one larceny and crack addiction, very serious  
10 crimes which give me huge concern about whether you will do  
11 it again.

12                  You have a crack addiction, and we will try and  
13 take care of that. We will give you support on supervised  
14 release. I think you've also had a horrible childhood, and  
15 on behalf of society, if you will, because I sort of  
16 represent it, you shouldn't have been raped, your mother  
17 shouldn't have been raped, you shouldn't have been brought up  
18 in such a horrible way that you were brought up.

19                  You are borderline in your intelligence, but  
20 actually you're quite an articulate man, and I do find now  
21 that you fully understand the different roles of all of us  
22 and that program did work in Missouri.

23                  As I say, under the 3553(a) factors, I take that  
24 into account, but I must admit I am worried about the  
25 criminal history, one after another after another, some of

1 which was while you were on release from the crime before.

2 I'm going to do the low end of the Guidelines at  
3 151 months. I'm going to give full credit for all time  
4 served in Missouri. And is there any time in a state  
5 institution?

6 MR. SHEA: There might be some. What I'd ask is if  
7 we could have the time to run from the date of the offense  
8 because that would be the day he went into custody.

9 MR. SHINE: That would be fair, your Honor.

10 THE COURT: Yes, so if we can figure out the time  
11 from that, absolutely. And to the extent that requires a  
12 mild departure, I will do that. I don't know if it does. In  
13 other words, I don't know if that was state custody or not.

14 MS. RIVERA: He was in state custody on related  
15 charges from 12/28/04 to 2/18/05, but I don't think that  
16 resulted in a sentence.

17 THE COURT: So I just want to make sure.

18 MS. RIVERA: If it wasn't applied to another  
19 sentence, he'll get credit for it on this one.

20 THE COURT: What I will do is, while I view this as  
21 the low-end Guideline sentence, I'm going to subtract  
22 whatever was spent in state court so that there's no problem  
23 with the Bureau of Prisons. So you'll tell me what that is,  
24 all right? The 500-hour drug treatment program, three years  
25 of supervised release, the first six months of which will be

1 in a drug treatment program. He should get mental health  
2 support throughout the three years so that he can deal with  
3 these very sad issues that happened during his childhood.  
4 The maximum amount of drug testing.

5 I don't know whether it's possible to get a GED  
6 while you're in the institution, but if not, he should be  
7 able to try and see if there's something that can help him  
8 with his profound learning disabilities. I forget whether  
9 you can -- you can read some, right, at a third-grade level?  
10 See if we can get him to a point where there's a degree.

11 Did you, by the way -- I forgot to ask you -- did  
12 you give the notice of this to the teller in case the teller  
13 wanted to --

14 MR. SHINE: We did. They were notified, your  
15 Honor. They provided no statements.

16 THE COURT: Victim witness. So the only thing I  
17 will disagree with the government on is by saying that  
18 whoever that woman was from CPCs gave the best possible  
19 representation because I do find that Mr. Shea's  
20 representation in this case has been exemplary. I think he's  
21 someone who's been your friend. I think that he's fought  
22 this and litigated this effectively and responsibly all the  
23 way through. And if it's possible, if Dr. Mart were willing  
24 to serve as his mental health advisor -- I don't know if he  
25 does that kind of thing -- when he gets out, I think there's

1 been a relationship that's been forged. Can we do that?

2 MS. RIVERA: It would depend if we have a contract  
3 with him or whether we'd be able to --

4 THE COURT: Will you just make that recommendation,  
5 at least, to go to him because it would make sense for him.

6 The bad news, Mr. Carrington, is, you've committed  
7 so many crimes, you're here in Federal Court. The good news  
8 is, we actually have money, and we will try and help you if  
9 you can help yourself.

10 So six months in a drug treatment program when he  
11 gets out, supervised release, and outpatient counseling after  
12 that and mental health counseling throughout. No fine,  
13 special assessment of whatever it is.

14 MS. RIVERA: \$100.

15 MR. SHINE: The restitution figure was \$10. We're  
16 not asking for restitution. I'm just indicating there was a  
17 restitution figure of \$10.

18 THE COURT: Yes. I don't see the bank here  
19 pressing for it.

20 MR. SHEA: Any fines? I don't know about a --

21 THE COURT: No fines.

22 MR. SHINE: No, the government is not recommending  
23 any fines.

24 THE COURT: No, nothing.

25 Mr. Carrington, as much as I'm condemning your

1 past, some people I don't see hope for, and I hope you  
2 continue with your hope.

3 Read the notice of appeal rights.

4 THE WITNESS: Is there any way I can ask for a  
5 court order for the CPAP machine?

6 THE COURT: Yes, make a recommendation for the  
7 sleep apnea.

8 MS. RIVERA: To the Bureau of Prisons?

9 THE COURT: Yes.

10 MS. RIVERA: And also for the 500-hour drug  
11 treatment program?

12 THE COURT: 500-hour drug treatment. Do you want  
13 to be near here, a recommendation to be close to New  
14 England?

15 MR. SHEA: Actually, he's more interested in the  
16 services, I think, than to be close to New England.

17 THE COURT: We want somebody who can provide the  
18 drug, the GED, maybe some vocational training.

19 MS. RIVERA: Mental health treatment?

20 THE COURT: Mental health treatment. He needs  
21 serious help, which I'm not sure he's ever received, okay?

22 MR. SHEA: Okay, we'll try and work on that.

23 THE COURT: Notice of appeal. Anything else?

24 MR. SHINE: No, your Honor. Thank you very much.

25 THE CLERK: Mr. Carrington, will you please stand,

1 sir. Mr. Charles Carrington, the Court hereby notifies you  
2 of your right to appeal the sentence. If you cannot afford  
3 the cost of an appeal, you may move to proceed in forma  
4 pauperis. If you cannot afford counsel for an appeal, one  
5 will be appointed for you. You are also notified that the  
6 Clerk of Court will file an appeal on your behalf if  
7 requested by you to do so. Any appeal from the sentence must  
8 be filed within ten days of entry of judgment on the docket.  
9 Do you understand these rights?

10 THE COURT: Do you understand you have the right to  
11 appeal?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: And what is it, ten days?

14 MR. SHEA: Ten days from the judgment.

15 THE COURT: Ten days from the judgment, so your  
16 lawyer will help you do that if you want to appeal. Okay?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Okay, great.

19 THE CLERK: Court is in recess.

20 (Adjourned, 5:20 p.m.)

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1 C E R T I F I C A T E  
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UNITED STATES DISTRICT COURT )  
DISTRICT OF MASSACHUSETTS ) ss.  
CITY OF BOSTON )  
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I, Lee A. Marzilli, Official Court Reporter, do  
hereby certify that the foregoing transcript, Pages 1 through  
72 inclusive, was recorded by me stenographically at the time  
and place aforesaid in Criminal Action No. 05-10074-PBS,  
United States of America V. Charles Carrington, and  
thereafter by me reduced to typewriting and is a true and  
accurate record of the proceedings.

In witness whereof I have hereunto set my hand this  
7th day of June, 2008.

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22 /s/ Lee A. Marzilli  
23  
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LEE A. MARZILLI, RPR, CRR  
OFFICIAL COURT REPORTER  
25